

- (e) Moreover, does the principle of proportionality in the case of a prohibition — on pain of criminal penalties — of games of chance that is imposed for regulatory reasons, such as the protection of players and the fight against crime, require the referring court to make a distinction between providers who offer games of chance without any authorisation whatsoever, and those who are established and licensed in other Member States of the European Union and who conduct their activities in the exercise of their freedom to provide services?
- (f) In the examination of the proportionality of a Member State's rules prohibiting the cross-border provision of gaming services without a licence granted or authorisation given in that Member State, on pain of criminal penalties, must account be taken, lastly, of the fact that, as a result of objective, indirectly discriminatory barriers to entry, it has not been possible for a provider of games of chance who is duly licensed in another Member State to obtain a licence in the first Member State, and the licensing and supervisory procedure in the State of establishment offers a level of protection that is at least comparable to that of the first Member State?
4. (a) Is Article 49 EC to be interpreted in such a way that the temporary nature of the service provision precludes the service provider from equipping himself with a certain infrastructure (such as a server) in the host Member State without being deemed to be established in that Member State?
- (b) Is Article 49 EC to be interpreted further as meaning that a provision directed at support services within a Member State which prohibits them from facilitating the provision of services by a provider established in another Member State also amounts to a restriction of that service provider's freedom to provide services if the support services are established in the same Member State as some of the recipients of the service?

Reference for a preliminary ruling from the Oberverwaltungsgericht für das Land Nordrhein-Westfalen, Münster (Germany) lodged on 31 August 2009 — Pietro Infusino v Oberbürgermeisterin der Stadt Remscheid

(Case C-348/09)

(2009/C 282/46)

Language of the case: German

Referring court

Oberverwaltungsgericht für das Land Nordrhein-Westfalen, Münster

Parties to the main proceedings

Applicant: Pietro Infusino

Defendant: Oberbürgermeisterin der Stadt Remscheid

Question referred

Does the term 'imperative grounds of public security' contained in Article 28(3) of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC⁽¹⁾ cover only threats posed to the internal and external security of the State in terms of the continued existence of the State with its institutions and important public services, the survival of the population, foreign relations and the peaceful co-existence of nations?

⁽¹⁾ OJ 2004 L 158, p. 77.

Appeal brought on 2 September 2009 by ThyssenKrupp Nirosta AG, formerly ThyssenKrupp Stainless AG against the judgment of the Court of First Instance (Fifth Chamber) delivered on 1 July 2009 in Case T-24/07 ThyssenKrupp Stainless AG v Commission of the European Communities

(Case C-352/09 P)

(2009/C 282/47)

Language of the case: German

Parties

Appellant: ThyssenKrupp Nirosta AG, formerly ThyssenKrupp Stainless AG (represented by: M. Klusmann and S. Thomas, lawyers)

Other party to the proceedings: Commission of the European Communities

Form of order sought by the appellant

- Set aside the judgment of the Court of First Instance of the European Communities (Fifth Chamber) of 1 July 2009 in Case T-24/07 *ThyssenKrupp Stainless AG v Commission* in its entirety;
- In the alternative, refer the case back to the Court of First Instance for fresh judgment;